IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

MFA.No. 689 of 2001()

OPMV.1636/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/PETITIONER:

PUNNOOSE KURIAN,S/O.KURIAN,OTTATHAIKKAL HOUSE, H.NO.42/1479, MARKET ROAD, COCHIN-14.

BY ADV. SRI.H.SIVARAMAN
SRI.MATHEW CHERIAN

RESPONDENTS/RESPONDENTS:

1.K.SUBRAMANIAN,S/O.NARAYANAN,KOCHAMBATTAYIL HOUSE,PERUMPARAMBU,EDAPPAL P.O., MALAPPURAM.

2.BABU RAJ,S/O.KRISHNAN NAIR, ARRAYIL HOUSE, VATTAKULAM DESOM, KUTTIPALA VILLAGE, MALAPPURAM DISTRICT.

3.THE UNITED INDIA INSURANCE CO. LTD., THRISSUR.

BY ADV. SRI.P.CHADRASEKHAR FOR R1 AND R2
SRI.A.A.MOHAMMED NAZIR FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.689 OF 2001 (B)

Dated this the 18th day of August, 2007

J U D G M E N T

KOSHY,J.

Appellant/Claimant suffered personal injuries in a motor accident on 27.10.1993. He applied for compensation contending that accident occurred due to the negligence of the 2nd respondent driver of the vehicle owned by the 1st respondent and insured by the 3rd respondent Insurance company. These issues were found in favour of the appellant but against a claim of compensation of Rs.7,62,750/-, only a total compensation of Rs.2,75,622/- was awarded. The above award includes the value of damage of car and as well as reimbursement of actual medical bills. Compensation for disability awarded was only Rs.54,000/- taking 15 as the multiplier. This appeal is filed questioning the quantum of compensation as other findings became final. Petitioner was an Engineering Contractor. According the petitioner, his monthly income was more than Rs.10,000/- per month. He was an income tax payee. Accident occurred on 27.10.1993.

Tribunal fixed his monthly income at Rs.2,000/- because as per the income tax return for 1992-1993 after deducting all expenses and deductions the net taxable income was only Rs.23,390/- even though income assessed for 1989-90 was Rs.40,980/-. Income tax assessment order for 1994-95 was shown to us, wherein taxable income assessed was slightly more than Rs.60,000/- for the accounting year 1993-94. If that is taken into account, monthly income can be fixed at Rs.5,000/-. But the previous years 1990-92 and 1992-93 relevant taxable income would not justify taking Rs.5,000/- as monthly income. However taking the fact that he was a registered Engineering Contractor and also taking into account that he was an income tax assessee, we fix Rs.3,000/- as the monthly income.

2. With regard to the injuries, the tribunal has considered the same in detail. Medical certificate shows the following injuries:

> "In the accident the petitioner sustained 2 x 1 cm lacerated wound over the right elbow with fracture olecranon ® with radial nerve palsy. Lacerated wound over the upper lip 3 x 1 cm and chin.

> Lacerate wound between eyebrows 2 cm x ½ cm. Fracture of shaft of humerus - junction of middle and lower 3rd (R). Diffuse cerebral oedema. Loss of 2 teeth. He was admitted in the Medical Trust Hospital on 27.10.1993. Tracheotomy done on 28.10.1993. Open reduction and internal fixation of the humeral fracture done on 3.11.1993 with DCP. Olecranon fracture was fixed by tension band wiring. Nerve conduction velocity studies showed involvement of lower brachial plexus. He was discharged on 26.11.1993 with advice to do physiotherapy. He was re-admitted on 6.12.1993 for physiotherapy and was discharged on 23.12.1993. He was advised to do physiotherapy for 6 months. Thereafter he was admitted in the Nair's Hospital on 10.5.1996 for treatment of head injury, mood disorder and he was discharged on 11.6.1996. After discharge he was treated as O.P. Thereafter he underwent treatment in the Trichur heart Hospital for post traumatic psychosis. Ext.A10 and A14 are two treatment slips issued by Dr.A.N.Subba Rao, Neuro Surgeon of Medical Trust Hospital. According to the doctor the petitioner is having post traumatic psychosis and he was advised treatment by Psychiatrist. He further certified that the petitioner has loss of memory and lack of attention."

It is submitted that still now he is suffering loss of memory and psychiatric problem and he is under treatment in Nair's Hospital and various medical bills and certificates, both Ayurvedic and Allopathy were produced before this Court to show that even now he is under continuous treatment. Tribunal has fixed 15% disability. It is submitted that

considering the after effects, apart from the 15% disability, he is unable to do work efficiently. We are not altering the 15% disability fixed by the tribunal. If that be so, compensation payable for 15% disability will be Rs.81,000/- as we have taken monthly income from Rs.2,000/- to Rs.3,000/-. Hence additional compensation payable for disability and loss of earning power will be Rs.27,000/-. Tribunal has found that he was under treatment for six months and Rs.12,000/- was awarded for actual loss of earning. Since we have increased the monthly income to Rs.3,000/-, another Rs.6,000/- is awarded under that head. For future treatment, no amount was awarded even the medical certificate produced before the tribunal shows that he needs continuous psychiatric treatment. The various bills were produced before this Court to show that he has spend substantial amount and he is still under treatment. Therefore we award Rs.12,000/- for future medical treatment expenses. Then total additional compensation payable will be Rs.45,000/-. The above additional amount should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till deposit over and above the decreed amount by the Tribunal. Since the

accident occurred more than a decade ago, we allow the appellants to withdraw the amount. Accordingly appeal is partly allowed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

prp

J.B.KOSHY & V.GIRI, JJ.

M.F.A.NO.689 OF 2001 (B)

J U D G M E N T

18th August, 2007